

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	4:09CR3091
	)	
v.	)	MEMORANDUM AND ORDER
	)	AMENDING TENTATIVE
JOBITA WILLETТА AVERY,	)	FINDINGS
	)	
Defendants.	)	
	)	

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On April 21, 2010, I issued tentative findings (filing 182). I gave notice that I intended to vary by use of the 18 to 1 ratio proposed by Senate Bill 1789 and I suggested that the defendant's base and total offense levels would drop to 34, down from 38, as a result of my intended variance. Upon further reflection, and while I still intend to vary and use the 18 to 1 ratio, I have concluded that my calculation was in error and that the base and total offense levels will drop from 38 to 36<sup>1</sup> rather than dropping from 38 to 34. Given the defendant's criminal history category of III, and a total offense level of 36 (as the defendant receives no downward or upward

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<sup>1</sup>This is how I calculated my amended proposed variance:

With 15.609 kilos of crack attributable to the defendant, I determined the low end of the base offense level for that quantity of crack. The base offense level is 38 and the low-end of that level is 4.5 kilos. I multiplied 4.5 times 18 in order to convert the crack to an equivalent amount of powder. The product of that multiplication is 81 kilos of powder. I added in the actual powder attributable to the defendant or 2.360 kilos. The total quantity of crack and powder converted to powder becomes 83.360 kilos. With that quantity, the base offense level becomes 36 (at least 50 but less than 150 kilos of powder). That is also the total offense level as the defendant receives no downward or upward adjustments.

adjustments), the proposed variance results in a prison range of 235 to 293 months in prison as opposed to 292 to 365 months calculated by the probation officer.

IT IS ORDERED that the tentative findings (filing 182 at CM/ECF p. 2, ¶ 2C, third and fourth sentences and footnote 3) are amended in accordance with this memorandum and order. All other provisions of the tentative findings (filing 182) remain the same.

DATED this 26<sup>th</sup> day of April, 2010.

BY THE COURT:

*Richard G. Kopf*  
United States District Judge